

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3093 OF 2006.

Dattatraya Kisan Gawade ..Applicant
V/s
The State of Maharashtra others. Respondents.

Mr. K.S. Patil for the applicant
Mrs. M.M. Deshmukh, A.P.P. for the State.
Mr. R.M. Joshi for respondents 2 and 3.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 19TH SEPTEMBER, 2006.

P.C.

. This Criminal Application No. 3093 of 2006 is for cancellation of bail which has been granted in favour of the respondent Nos. 2 and 3, who are original accused in C.R. No. 223/2006 alleging offence punishable under Sections 326 r/w 345 of Indian Penal Code.

2. The accused were originally produced before the learned Judicial Magistrate, F.C. Vashi and he has recorded as under:-

"Accused No. 1 to 4 are produced before me at 4.00 p.m. I.O. is present with case diary. Heard learned A.P.P. and Counsel for accused.

Accused has no complaint of ill-treatment against police.

A case diary shows that investigation is in progress. Offence is serious. A injured admitted in hospital. Hence considering this fact only one day P.C. is granted i.e. till 9.8.2006. Copy to accused."

The remand was sought on 8th August, 2006. Thereafter on 9th August, 2006 the second remand report was submitted and prayer for police custody remand was rejected. The accused were remanded to Magisterial custody till 22nd August, 2006.

3. It appears that on the same day respondents 2 and 3 preferred a bail application and the same was allowed by the learned Magistrate in the following terms:-

"Perused the application and say. Heard the learned Counsel of accused No. 1 to 4 and A.P.P. on behalf of State. There is no injury certification on record. Hence, considering the facts accused 1 to 4 be released on executing a P.R. bond of Rs. 15000/- with one solvent surety of like amount separately."

4. Mr. Patil appearing for the original complainant submits that the offences alleged are serious in nature. The applicant original complainant

was taking treatment and that is why the certificate and details with regard to the injuries sustained could not be produced is the stand of the prosecution. This stand is noted in the order and that is how earlier police custody remand and later on Magisterial custody remand was granted. Suddenly and without any changed circumstances being brought on record, on the same day, the learned Magistrate took cognizance of the application for bail and by a cryptic order has allowed the same.

5. He has invited my attention to the provisions contained in Code of Criminal procedure and more particularly, Section 437 and sub-section (1) wherein the Magistrate was obliged to record satisfaction in terms thereof. The learned Magistrate was aware of the same but has proceeded to ignore the statutory mandate as prescribed in law.

6. Mr. Patil relied upon a Judgment of learned Single Judge of this Court, reported in 2005 All MR (Cri) 296, **Mr. Virendra Singh A Chandok V. State of Maharashtra** and has contended that the Magistrate has to specifically negative the existence of reasonable ground

for believing that the accused is guilty of an offence punishable with sentence of death or imprisonment of life. It is only then the Magistrate can be said to have legitimately exercised jurisdiction as is permissible by Section 437 of the Code.

7. On the other hand, the learned Counsel appearing for the respondents 2 and 3 supported the order. He has also invited my attention to the statement of the applicant/complainant. The applicant is supposed to have driven a vehicle himself after the alleged assault and at his own reached MGM Hospital at Vashi for treatment. He was fully conscious. In such circumstances, the entire case is false and there is no substance in the allegations against respondents 2 and 3.

8. In my view, after perusal of the application and the annexures thereto, so also the order of the learned Magistrate the aforesaid aspects highlighted by the Counsel for the accused are not referred in the order. All that the learned Magistrate has done is that because there is no injury certificate, that the accused deserves to be enlarged on bail. However, he lost sight

of the fact that on the same day he refused police custody remand and granted Judicial/Magisterial Custody on the ground that the prosecution needs time. As to what compelled him on the same day to pass an order enlarging the accused on bail is not clear from the order passed by him on 9th August, 2006 (page 20). Moreso, one day prior he has noted that offence is serious and the injured is in hospital. Therefore, the impugned order cannot be sustained. It is contrary to the law laid down by this Court as also the mandate of section 437 of Cr.P.C.

9. In such circumstances, the order is set aside. The respondent Nos. 2 and 3 shall surrender before the concerned Magistrate within 10 days from today. However, it would be open for them to apply for being enlarged on bail afresh and such application shall be considered on its own merits and in accordance with law, uninfluenced by the present order. All contentions are kept open.

(S.C.DHARMADHIKARI, J.)